IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

CRL.A.No. 672 of 2000()

ST.2309/1998 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM DT.24.3.2000.

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APPELLANT: COMPLAINANT

K.SUBRAMANI, S/O.V.K.SWAMI,
C/O.ALI MUHAMMED QUARTERS,
KODAMAD, KONDOTTY, MALAPPURAM DISTRICT

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS: ACCUSED
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1. T.DEVARAJAN @ KUTTAN , S/O. T.SIVANKUTTY,
MUMTAZ DIE WORKS,
MAIN ROAD, NILAMBUR,
MALAPPURAM DISTRICT.

2. STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.SUNNY MATHEW
BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. A NO. 672 of 2000

Dated 28th June, 2007

JUDGMENT

The appellant is the complainant who had initiated proceedings under section 138 N.I Act in which the accused was acquitted. The case of the complainant/appellant is that on 23-8-1997, a sum of Rs.45,000/- was borrowed by the accused from him promising to repay the same within two months and issued a cheque dated 24-10-97 for a sum of Rs.45,000/- . When the cheque was presented for encashment, the same got bounced on account of insufficient funds in the account of the accused. Even though lawyer notice sent demanding payment was received by him, he did not send any reply nor was the amount paid. The evidence adduced in the matter consisted of the testimony of PW-1 and Exts.P1 to P6. PW-1 has testified as to the execution of the cheque. I find that in the cross examination of PW-1 there was no suggestion that Ext.P1 cheque was not issued and the

signature is not that of the accused. There is no dispute as to the issuance of the cheque as well. Only when questioned under section 313 Cr.P.C., the accused stated that the cheque was issued for the loan availed by his employer. There is no such case when PW-1 was cross examined. Moreover, the conduct of the accused in not sending reply to the lawyer notice is telling in the circumstances. PW-1 when cross examined has testified with respect to his business of dealing in second hand vehicles. Nothing has been brought out to disbelieve the version of PW-1 in this regard. The finding of the court below that PW-1 has not succeeded in proving the consideration and his financial soundness is not a relevant matter in the circumstances.

2. In the circumstances, the execution of the cheque stands established. No evidence has been adduced to rebut the statutory presumptions under sections 118 and 139 N.I.Act. In the circumstances, I find that the decision of the courts below is only to be set aside and I do so. I

find that the evidence adduced in the matter established beyond reasonable doubt that the accused is guilty of the offence under section 138 of the Act. He has been convicted for the same. The accused is sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.50,000/- to the complainant and in default to undergo simple imprisonment for 3 months. As sought by the counsel, the respondent/accused is granted 4 months' time from today onwards to remit the amount of compensation. The respondent/accused shall appear before the JFCM, Malappuram on 29-10-2007 to receive the sentence.

The Crl.appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. 672 OF 2000

JUDGMENT

28-6-2007.